REMARKS:

Claims 1-38 are currently pending. Claims 1 and 19 and have been amended to improve readability, and the amendments are not intended to relate to patentability or narrow the claim scope. Claims 37 and 38 have been added. Reconsideration is respectfully requested.

Art Rejections

The Office Action includes a rejection of claims 1, 5, 8-9, 11, 13-19, 23, 26-27, 29 and 31-36 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Application Pub. No. 2002/0095228 filed by Corts et al. (hereinafter "Corts"). The rejection is respectfully traversed.

Independent claim 1 recites an intelligent digital broadcast scheduling system, said scheduling system arbitrating the use of specified broadcast time slots, said broadcast comprising one or more or a combination of data content comprising audio, video, text, graphics, images, or data, said data content available across networks. The scheduling system comprises a messaging protocol, which comprises at least priority indicators, service categories, and service classes. Claim 1 further recites an arbitrator, said arbitrator intelligently determining a relative value of specified priority indicators, service categories, and service classes of data content entities from a group of requesting content providers; a scheduler, said scheduler collecting and sequencing said data content for broadcast based on said arbitrator determinations; and an in-band on-channel (IBOC) network broadcasting said data content as per said sequence. Claim 19 recites the above noted subject matter as well as additional subject matter.

In contrast, Corts does not disclose the combination of features recited in claim 1. For example, Corts does not disclose a messaging protocol including priority indicators as recited

in claim 1. As noted in the specification at paragraphs [0040]-[0045], priority indicators reflect transmission priority and can include, for example, extreme high priority (e.g., suspend current transmission, useful in emergency alert situations), high priority (e.g., transmission occurs at the earliest opportunity), normal (e.g., transmission according to the associated repetition rate) and background/low (e.g., the minimum broadcast requirement is defined by the repetition rate). The Office Action does not specifically indicate what feature in Corts allegedly corresponds to the claimed priority indicators. Paragraphs [0233]-[0239] in Corts, cited by the Examiner, disclose scheduling parameters including "the time at which the datacast element will be broadcast," "the length of time it will be broadcast," "the frequency with which it will be broadcast" and "the starting and ending dates for the above parameters." Paragraphs [0233]-[0239] in Corts relate to specific time and date parameters, and do not disclose a messaging protocol comprising priority indicators as recited in claim 1.

In addition, Corts does not disclose a messaging protocol including service classes as recited in claim 1. As noted in the specification at paragraph [0046], service classes relate to grades of service, e.g., that can be requested by a content provider, and which can include, for example, basic, preferred, premium, etc. The Office Action does not specifically indicate what feature in Corts corresponds to the claimed service classes. Paragraph 218 in Corts, cited by the Examiner, discloses monitoring the available bandwidth to ensure that sufficient capacity exists to broadcast all required information. Paragraph 218 of Corts relates to a diagnostic monitoring of available bandwidth and does not relate to a messaging protocol that includes service classes as recited in claim 1.

Accordingly, for at least the above noted reasons, claim 1 is not anticipated by Corts. Claim 19 is similarly not anticipated at least for similar reasons. Withdrawal of the rejection and allowance of claims 1 and 19 are respectfully requested.

The Office Action also includes a rejection of claims 2 and 20; a rejection of claims 3-4, 7, 10, 21-22, 25 and 28; a rejection of claims 6 and 24; and a rejection of claims 12 and 30 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Corts in view of various secondary references -- Beyda (U.S. Pat. No. 5,935,218), Voit (U.S. Pub. No. 2002/0044567), Solondz (U.S. Pat. No. 5,615,249) or Gross (U.S. Pat. No. 6,782,510). These claims depend variously from claims 1 and 19 and are therefore allowable at least by virtue of dependency. Withdrawal of the rejection and allowance of these claims are respectfully requested.

In addition, dependent claims 2 and 20 recite additional subject matter not disclosed in the applied references. Claims 2 and 20 recite an intelligent digital broadcast scheduling system, wherein said system comprises a hierarchy of gateways, including one or more first level gateways arbitrating and scheduling a first data content level and including one or more second level gateways operatively connected to said first level gateway(s) and arbitrating and scheduling a second data content level. Contrary to the Office's suggestion, Beyda does not disclose the claimed hierarchy of gateways for arbitrating and scheduling respective data content levels. The Office cites "member 100" of Figure 2 and column 3, lines 4-10, 13-18, and 28-32 for allegedly disclosing this subject. However, Figure 2 illustrates a flow diagram, not a "member," and column 3, lines 4-10, 13-18, and 28-32 contain no disclosure relating to multiple gateways. Accordingly, it is not seen how these sections of Beyda can disclose the subject matter recited in claims 2 and 20. If the Office maintains this ground of rejection, the Office is respectfully requested to explicitly point out where the claimed subject matter is allegedly disclosed. Withdrawal of the rejection and allowance of dependent claims 2- and 20 are respectfully requested for at least these additional reasons.

New Claims 37 and 38

Claim 37 has been added herein and recites a method for intelligently scheduling digital broadcast data content that includes subject matter that substantially parallels that found in claim 1. Accordingly, claim 37 is allowable over the applied art at least for reasons similar to those set forth above for claim 1. Allowance of claim 37 is respectfully requested.
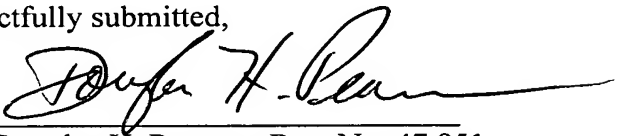
Claim 38 has also been added herein and recites a processor and a memory wherein the processor is configured to execute steps similar to those recited in claim 37. Support may be found, for example, at least at paragraph [0129]. Claim 38 is allowable over the applied art at least for reasons similar to those set forth above for claim 1. Allowance of claim 38 is respectfully requested.

Conclusion

In light of the remarks above, withdrawal of the rejections and allowance of this application are respectfully requested. Should there be any questions in connection with this application, the Examiner is invited to contact the undersigned at the number below.

Respectfully submitted,

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